

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Respondent,

vs.

CHRISTOPHER RYAN BUSBY,

Petitioner.

Case No.: 2:15-cr-00353-GMN-NJK

**ORDER DENYING PETITIONER'S  
§ 2255 MOTION FOR INEFFECTIVE  
ASSISTANCE OF COUNSEL**

Pending before the Court is the claim for ineffective assistance of counsel in Petitioner Christopher Ryan Busby's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 ("§ 2255 Motion"), (ECF No. 184). The Government filed a Response, (ECF No. 197), to which Petitioner replied, (ECF No. 201). Additionally, because the Court conducted an evidentiary hearing for Petitioner's ineffective assistance of counsel claim, the parties filed a Joint Hearing Brief, (ECF No. 280).

Because Petitioner fails to establish that counsels' performance was deficient under *Strickland v. Washington*, the Court DENIES Petitioner's § 2255 Motion.

**I. BACKGROUND**

In 2019, Petitioner pled guilty to Count One of the Indictment: receipt of child pornography on his Dell laptop in violation of 18 U.S.C. § 2252(a)(2) and (b). (*See* Mins. Proceedings, ECF No. 113). Then the Court sentenced Petitioner to custody for 121 months followed by 45 years' supervised release after finding him guilty of Count One. (*See* J., ECF No. 137); (Mins. Proceedings, ECF No. 135). In 2021, Petitioner filed the instant § 2255 Motion pro se. The Court granted the Government's motion for an order deeming the attorney-client privilege waived between Petitioner and the former attorneys he is accusing provided

1 constitutionally ineffective assistance. (Order, ECF No. 193). The briefing schedule was then  
2 extended to allow attorneys Tony Abbatangelo, Heidi Ojeda, and G. Michael Tanaka to  
3 respond to Petitioner’s ineffective assistance of counsel claims. In 2023, the Court entered an  
4 Order denying in part, and deferring in part, the § 2255 Motion. (Order, ECF No. 203). The  
5 Court deferred ruling on 12 grounds for ineffective assistance of counsel, scheduled an  
6 evidentiary hearing to resolve the remaining grounds, and appointed defense counsel for  
7 purposes of the hearing. An evidentiary hearing was held on June 30 and July 1, 2025, where  
8 the Court heard oral argument from Petitioner’s counsel and the Government as well as witness  
9 testimony from trial counsel Tony Abbatangelo, trial counsel Heidi Ojeda, Petitioner  
10 Christopher Busby, then-Prosecutor Elhan Roohani, and Las Vegas Metropolitan Police  
11 forensic examiner Matthew Trafford.

## 12 **II. LEGAL STANDARD**

13 Section 2255 provides, in pertinent part: “A prisoner in custody under sentence of a  
14 court established by Act of Congress claiming the right to be released upon the ground that the  
15 sentence was imposed in violation of the Constitution or laws of the United States . . . may  
16 move the court which imposed the sentence to vacate, set aside or correct the sentence.” *See*  
17 *Davis v. United States*, 417 U.S. 333, 344–45 (1974). To warrant relief, the prisoner must  
18 demonstrate the existence of an error of constitutional magnitude which had a substantial and  
19 injurious effect or influence on the guilty plea or the jury’s verdict. *See Brecht v. Abrahamson*,  
20 507 U.S. 619, 637 (1993); *see also United States v. Montalvo*, 331 F.3d 1052, 1058 (9th Cir.  
21 2003) (“*Brecht*’s harmless error standard applies to habeas cases under section 2255[.]”).  
22 Relief is warranted only upon the showing of “a fundamental defect which inherently results in  
23 a complete miscarriage of justice.” *Davis*, 417 U.S. at 346.

24 “The customary procedure for challenging the effectiveness of defense counsel in a  
25 federal criminal trial is by collateral attack on the conviction under 28 U.S.C. § 2255.” *United*

1 *States v. Miskinis*, 966 F.2d 1263, 1269 (9th Cir.1992) (quoting *United States v. Birges*, 723  
 2 F.2d 666, 670 (9th Cir.), *cert. denied*, 466 U.S. 943 (1984) (alteration omitted)). To prevail on  
 3 an ineffective assistance of counsel claim, Petitioner must show both (1) deficient performance  
 4 under an objective standard of reasonableness and (2) prejudice. *Strickland v. Washington*, 466  
 5 U.S. 668, 687 (1984). To demonstrate deficient performance, “[t]he challenger’s burden is to  
 6 show ‘that counsel made errors so serious that counsel was not functioning as the ‘counsel’  
 7 guaranteed to the defendant by the Sixth Amendment.’” *Harrington v. Richter*, 562 U.S. 86,  
 8 104 (2011) (quoting *Strickland*, 466 U.S. at 687). Under this analysis, the question is whether  
 9 “counsel’s representation fell below an objective standard of reasonableness;” and the Court’s  
 10 inquiry begins with a “strong presumption that counsel’s conduct [falls] within the wide range  
 11 of reasonable representation.” *United States v. Ferreira–Alameda*, 815 F.2d 1251, 1253 (9th  
 12 Cir. 1987) (as amended). “[T]he standard for judging counsel’s representation is a most  
 13 deferential one” because “the attorney observed the relevant proceedings, knew of materials  
 14 outside the record, and interacted with the client, with opposing counsel, and with the judge.”  
 15 *Harrington*, 562 U.S. at 105. To demonstrate prejudice, the petitioner must show that “but for  
 16 counsel’s unprofessional errors,” there is a reasonable probability “the result of the proceeding  
 17 would have been different.” *Strickland*, 466 U.S. at 694 (“A reasonable probability is a  
 18 probability sufficient to undermine confidence in the outcome.”). A court need not examine the  
 19 existence of prejudice if the petitioner fails to establish cause. *Engle v. Isaac*, 456 U.S. 107, 134  
 20 n.43 (1982). Moreover, a petitioner must allege facts—not conclusory allegations—to warrant  
 21 relief. *See James v. Borg*, 24 F.3d 20, 26 (9th Cir. 1994).

### 22 **III. DISCUSSION**

23 Petitioner filed the instant § 2255 Motion pro se, arguing that vacatur of his sentence is  
 24 warranted for numerous reasons. (*See generally* § 2255 Mot., ECF No. 184). Because the  
 25

1 Court entered an Order resolving part of the § 2255 Motion, it need only address the remaining  
2 unresolved grounds for Petitioner's ineffective assistance of counsel claim.

3 Before the Court are 12 remaining grounds for Petitioner's ineffective assistance of  
4 counsel claim: Grounds 1, 3, 5, 6, 7, 7(a), 8, 9, 10, 11, 12, and 17. During the evidentiary  
5 hearing, Petitioner's counsel conceded that many of the grounds were improperly alleged, and  
6 attempted to reframe the issue before the Court by arguing that Petitioner did not enter his plea  
7 knowingly. Petitioner's assertion of a legal claim not included in the § 2255 Motion would  
8 generally be improper, but because the Government had an opportunity to respond to these  
9 arguments at the hearing, the Court finds it fair to consider them. Moreover, because the Court  
10 must construe a pro se litigant's filings liberally, it provides some latitude to Petitioner and will  
11 consider the merits of his argument that he entered an involuntary plea as it relates to his  
12 existing ineffective assistance of counsel claim. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir.  
13 2000) ("[C]ourts must construe pro se pleadings liberally."). The Court takes up each ground  
14 for ineffective assistance in turn.

#### 15 **A. Ground 1**

16 In Ground 1, Petitioner alleges that his trial counsel, Heidi Ojeda, was infective when  
17 she failed to investigate the facts of his case and advise him about potential trial defenses. (Joint  
18 Hr'g Br. 2:24–25, ECF No. 280). Petitioner specifically takes issue with Ojeda's failure to  
19 investigate the unallocated space on the Dell laptop's hard drive through a forensic examiner  
20 and her failure to reveal that Petitioner did not own the Dell laptop. (§ 2255 Mot. at 163).

21 The Court begins by discussing whether Ojeda's failure to investigate the unallocated  
22 space on the Dell laptop constitutes deficient performance. "Unallocated space is space on a  
23 hard drive that contains deleted data, usually emptied from the operating system's trash or  
24 recycle bin folder, that cannot be seen or accessed by the user without the use of forensic  
25 software." *United States v. Flyer*, 633 F.3d 911, 918 (9th Cir. 2011). Ojeda testified that prior

1 to her appointment, Petitioner had already admitted to the Government in proffer sessions that  
2 his computer was used by third parties (including his male escort clients) to roleplay the  
3 pornography on his computer, and he regularly cleaned his computer by deleting the  
4 pornography videos from it monthly. (*See* Proffer Session Tr. at 199, Gov’t. Hr’g Ex. 12).  
5 Petitioner proffered that he “never knew what was underage or not on [his] computer.” (*Id.*). It  
6 is, therefore, no surprise that Las Vegas Metropolitan Police forensic examiner Matthew  
7 Trafford found child pornography in the unallocated space (*i.e.* the space containing deleted  
8 videos). (*See generally* Trafford Forensic Report, Gov. Hr’g Ex. 7). Petitioner’s proffer session  
9 admissions gave Ojeda no reason to continue to pursue investigating this fact given that  
10 Petitioner was on track to enter a guilty plea. At the evidentiary hearing, Ojeda testified that  
11 she contacted a computer forensic expert, retained the expert’s information in Petitioner’s file,  
12 but did not ultimately need to hire him. Ojeda testified that had the case gone to trial, she  
13 would have hired a forensic expert to investigate the Dell laptop further, but again did not do so  
14 because the case was heading towards a guilty plea.

15 The Court finds that Ojeda made a reasonable strategic decision to forego hiring a  
16 forensic expert given Petitioner’s multiple prior proffers and his decision to plead guilty.  
17 *Harrington*, 562 U.S. at 104 (“Strategic decisions—including whether to hire an expert—are  
18 entitled to a ‘strong presumption’ of reasonableness.”). Thus, Ojeda’s decision to not  
19 investigate the unallocated space on the Dell laptop does not constitute deficient performance.  
20 Petitioner therefore fails to meet his burden of proving ineffective assistance for her failure to  
21 investigate the unallocated space on the Dell laptop.<sup>1</sup>

22 Next, the Court considers whether Ojeda was ineffective for failing to investigate  
23 whether Petitioner owned the Dell laptop. During a proffer session, prior to Ojeda being  
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25 <sup>1</sup> Because the Court finds that Petitioner fails to meet his burden of proving deficient performance, the Court  
“need not examine the existence of prejudice.” *Engle*, 456 U.S. at 134 n.43.

1 appointed as his counsel, Petitioner admitted that his laptop was used by his male escort clients  
2 for downloading pornographic images depicting young boys or boys without pubic hair who  
3 looked young. (Proffer Session Tr. at 190, 191, 194, 199, Gov't. Hr'g Ex. 12). Moreover,  
4 Ojeda testified that she spoke to one of Petitioner's roommates who identified that the Dell  
5 laptop belonged to Petitioner. Trafford's forensic report also concluded that the Dell laptop  
6 was owned and operated by Petitioner. Trafford bookmarked 80 files on the Dell laptop to  
7 show ownership of the computer, including dozens of images of Petitioner and his personal  
8 documents. (Trafford Forensic Report at 172, Gov. Hr'g Ex. 7). Although Trafford also found  
9 documents in the name of Vincent Marrella on the Dell laptop, he testified during the  
10 evidentiary hearing that the overwhelming majority of the documents found on the Dell laptop  
11 belonged to Petitioner. Moreover, the usernames and email addresses saved onto the Dell  
12 laptop, as well as the saved autofill fields, indicate that Petitioner owned and operated it to  
13 conduct both personal and professional business. (Trafford Forensic Report at 174–176, Gov.  
14 Hr'g Ex. 7). Thus, the Court finds that Ojeda made a reasonable strategic decision to not  
15 investigate whether Petitioner owned and operated the Dell laptop because Petitioner had  
16 already claimed ownership of the Dell laptop, his roommate confirmed that he owned the  
17 laptop, and because Trafford's forensic report put forth well-supported conclusions connecting  
18 Petitioner to the Dell laptop. Accordingly, this decision does not constitute deficient  
19 performance and Petitioner fails to meet his burden of proving ineffective assistance.

20 In sum, Petitioner fails to meet his burden of proving constitutionally ineffective  
21 assistance of counsel as to Ground 1. Thus, Ground 1 is DENIED.

### 22 **B. Ground 3**

23 In Ground 3, Petitioner argues that Ojeda should have objected at the change of plea  
24 hearing when Petitioner displayed signs of confusion and hesitancy that he argues demonstrate  
25 he was not entering the plea knowingly. (Joint Hr'g Br. 8:14–20). He further contends that

1 appellate counsel G. Michael Tanaka was ineffective for failing to raise this argument on  
2 appeal. (Not. re Grounds 2:3–4). In the Court’s Order denying in part, and deferring in part, the  
3 § 2255 Motion, the Court determined that it could not make a merits decision on this ground  
4 because the record was inadequately developed. (Order Den. & Deferring § 2255 Mot., ECF  
5 No. 203). The Court therefore scheduled the evidentiary hearing to develop the record. At the  
6 evidentiary hearing, Petitioner failed to present any evidence to support his claim against  
7 Tanaka, despite being informed that the record was undeveloped. Thus, having given  
8 Petitioner the chance to develop the factual record against Tanaka, and him failing to do so, the  
9 Court finds that Petitioner has failed to meet his burden. Accordingly, ground 3 is denied as to  
10 Tanaka.

11 The Court now turns to this ground as alleged against Ojeda. At the change of plea  
12 hearing, Petitioner was sworn to answer the Court’s questions truthfully. When asked by the  
13 Court: “do you understand that you have just sworn to tell the truth which means that your  
14 answers to my questions will be subject to the penalties of perjury if you do not answer  
15 truthfully?” Petitioner responded, “Yes.” (Change of Plea (“COP”) Tr. 3:1–5, ECF No. 153).  
16 The Court then proceeded with its Rule 11 colloquy and Petitioner indicated that no one had  
17 threatened, forced, or coerced him into pleading guilty. (*Id.* 19:21–20:9).

18 With respect to the charges before him, the Court questioned Petitioner as follows:

19 THE COURT: So have you been provided with a copy of the charges against you?

20 THE [PETITIONER]: Yes, I have.

21 THE COURT: And do you read, write and understand the English language?

22 THE [PETITIONER]: Yes, I do.

23 THE COURT: And do you feel that you understand the charges?

24 THE [PETITIONER]: Yes.

25 . . .

1 THE COURT: So you are charged in Count One of the Indictment with receipt of child  
2 pornography, violation of Title 18 United States Code, Section 2252(a), Subsection  
3 (A)(2). It is a crime for a person to knowingly receive or distribute any material that  
4 contains child pornography that is mailed or using any means or facility or interstate or  
5 foreign commerce, has been shipped or transported in or affecting interstate or foreign  
6 commerce by any means including by computer. There are three elements to this  
7 offense. The first one is that you knowingly received child pornography or material  
8 which contained such child pornography. The second element is that the visual  
9 depictions have been mailed and/or shipped and or transported in interstate commerce,  
10 including by computer. And the third element is that you knew that the visual depiction  
11 containing the material showed a minor engaged in sexually explicit conduct. So do you  
12 understand that this is what the Government would have to prove beyond a reasonable  
13 doubt in order for you to be convicted of this offense?

14 THE [PETITIONER]: Yes.

15 (*Id.* 3:6–14; 3:19–4:15).

16 The Court then determined that Petitioner was competent before Elhan Roohani, the  
17 prosecutor assigned to the case, described the essential terms of the plea agreement, including  
18 who the agreement binds, the offense charged, and where to reference the facts supporting the  
19 guilty plea:

20 MS ROOHANI: This Plea Agreement will bind Mr. Busby and the  
21 United States Attorneys Office in this District. It does not bind your Honor, any  
22 prosecuting, administrative or regulatory authority or the Probation Office.

23 Mr. Busby is knowingly and voluntarily agreeing to plead guilty to the criminal  
24 Indictment that was filed on December 16th, 2015 charging him with one Count of  
25 receipt of child pornography in violation of Title 18 United States Code,  
18 Section 2252(a), Subsection (A)(2).

...

The plea agreement includes elements of the offense which your Honor has gone  
through with him, as well as the facts supporting the guilty plea that begin at the bottom  
of Page 3 and continue to the top of Page 6.

(*Id.* 9:10–18; 10:3–6).



1 The Court then confirmed that Petitioner understood the terms of his plea agreement and  
2 had adequate time to discuss his case with Ojeda:

3 THE COURT: Mr. Busby, do you feel that you understand the terms of your plea  
4 agreement?

5 THE [PETITIONER]: Yes, I do.

6 . . .

7 THE COURT: And, Mr. Busby, are you satisfied with the legal representation that your  
8 attorney has provided to you so far?

9 THE [PETITIONER]: Yes, I am.

10 THE COURT: Have you had sufficient time to discuss your case with her?

11 THE [PETITIONER]: Yes.

12 (*Id.* 13:18–20; 14:4–10).

13 Next, the Court explained the application of the sentencing guidelines to Petitioner and  
14 confirmed that he had discussed them with counsel and understood the role of the Judge, the  
15 Presentence Investigation Report (“PSR”), and the general nature of the sentencing process.  
16 After Petitioner waived his right to not testify, the Court asked Petitioner questions to establish  
17 the factual basis for his guilty plea:

18 THE COURT: So it says here that: “On January 16th of 2015 a detective with the  
19 Metropolitan Police Department was able to download two video files containing child  
20 pornography. One was a video of a 1-year-old female child lying on a bed with an adult  
21 male rubbing his erect penis on the female child’s exposed vagina and ejaculating on the  
22 child’s stomach. And the second video was of an adult male forcing his erect penis into  
23 the mouth of the 1-year-old, and that the IP address for the child pornography returned  
24 an address of 7051 Jasmine Creek Way, Las Vegas, Nevada 89119. And that when they  
25 obtained a search warrant for that Jasmine Creek address they spoke with two residents  
of the home who indicated that you resided in the downstairs bedroom and was in the  
process of being evicted. A laptop was recovered from that downstairs bedroom where  
you were residing and 35 child pornography videos downloaded from the Ares, A-R-E-  
S, peer-to-peer program were located, as well as search key words tarpa boys, bitty boys,  
young boys, little boys, baby porn, kid hardcore and dad and son, and that you were the

1 sole owner of the computer.” And also found were the two downloaded files that the  
2 Detective had located earlier. Is that a true and correct factual statement?

3 THE [PETITIONER]: Yes.

4 (*Id.* 20:18–22).

5 Then the alleged point of confusion that Petitioner relies on for this ground occurred:

6 THE COURT: Is there anything in there that’s not entirely true?

7 THE [PETITIONER]: That computer **was mainly in my possession**, but I was not the  
8 sole owner and sole user of that computer.

9 THE COURT: Were you the person that downloaded the 35 child pornography videos  
10 that were located on that laptop?

11 (Counsel confers with Defendant)

12 THE [PETITIONER]: No, I am not, but **I am aware that they are there.**

13 THE COURT: Ms. Roohani, is that sufficient for you?

14 MS. ROOHANI: No, your Honor.

15 THE COURT: Do you have any other information?

16 MS. ROOHANI: Your Honor, perhaps we could ask him if he downloaded any of the  
17 child pornography videos, that would be sufficient to make a Factual Basis for the plea.

18 THE COURT: All right. Were there any of those child pornography videos that you  
19 downloaded?

20 THE [PETITIONER]: **I knowingly received the videos.**

21 THE COURT: All right, well, the elements are that he knowingly received child  
22 pornography videos, and he says he knowingly received the videos. Did you -- when  
23 you received the videos did you know that they were child pornography?

24 THE [PETITIONER]: Yes.

25 THE COURT: Ms. Roohani?

1 MS. ROOHANI: Your Honor, I believe that's sufficient for a Factual Basis for this plea.

2 THE COURT: All right. Well, the Court finds that the elements of this particular offense  
3 have been met by the facts provided in the plea agreement and the Defendant's statement  
4 here in Court. Since you do, in fact, acknowledge that you are guilty as charged in the  
5 Indictment and you are aware of your right to a trial, what the maximum punishment is I  
6 will accept your guilty plea conditionally. It is the finding of this Court in the case of  
7 the United States versus Christopher Ryan Busby that the Defendant is fully competent  
and capable of entering an informed plea. His plea of guilty is knowing and voluntarily  
supported by an independent basis of fact containing the essential elements of the  
offense charged.

8 (*Id.* 21:23–23:14).

9 The Court begins with the baseline that statements made during a plea hearing are  
10 entitled to a strong presumption of veracity in later attacks on the plea. *United States v. Ross*,  
11 511 F.3d 1233, 1236–37 (9th Cir. 2008). Despite Petitioner's testimony that he understood the  
12 terms of his plea agreement and pled guilty to the essential elements of Receipt of Child  
13 Pornography, he now claims that he did not enter the plea knowingly. Moreover, he testified in  
14 Court at the evidentiary hearing that he committed perjury during the change of plea hearing.  
15 Petitioner testified that he lied to the Court when he pled guilty to the crime and maintains that  
16 he is innocent of the offense. He said he was "coached" by Ojeda to admit the essential  
17 elements of the offense charged (*i.e.* that he knowingly received the videos), even though he  
18 refused to admit that he personally downloaded the videos. Petitioner testified that he only pled  
19 guilty so that he could testify in another case.

20 Despite Petitioner's argument otherwise, the record establishes that Petitioner's decision  
21 to plead guilty was an informed, knowledgeable, and a voluntary act. The change of plea  
22 hearing was complete and thorough, and there is no contention otherwise by Petitioner. Such  
23 completeness strongly suggests that Petitioner comprehended the plea agreement, including the  
24 offense charged as outlined during the hearing. *See United States v. Nostratis*, 321 F.3d 1206,  
25 1209 (9th Cir. 2003). During the plea proceeding, Petitioner stated under oath that he

1 understands the charges brought against him and had sufficient time to discuss the facts of his  
2 case and his decision to enter a plea with his counsel. He confirmed that he had read the entire  
3 plea agreement and understood its terms. Such declarations made in court and under oath carry  
4 a strong presumption of veracity and are sufficient to establish that Petitioner entered the plea  
5 agreement knowingly and voluntarily. *See United States v. Rubalcaba*, 811 F.2d 491, 494 (9th  
6 Cir. 1987); *United States v. Peterson*, 995 F.3d 1061 (9th Cir. 2021).

7 During the change of plea hearing, Petitioner admitted that he received the videos on the  
8 laptop he mainly possessed and knew the videos were child pornography. Although Petitioner  
9 now claims that he lied during the change of plea hearing, this does not make his knowing and  
10 voluntary guilty plea otherwise invalid and does not serve as a sufficient basis for his  
11 ineffective assistance of counsel claim. *See, e.g., United States v. Ieremia*, No. CR 16-00744  
12 (01) DKW, 2018 WL 3615979, at \*9 (D. Haw. July 27, 2018) (finding that a defendant's  
13 decision to lie when pleading guilty does not render his guilty plea involuntary). Thus, the  
14 Court finds that Ojeda's performance was not deficient for the reasons Petitioner asserts and  
15 DENIES Ground 3.

### 16 C. Ground 5

17 In Ground 5, Petitioner alleges that Ojeda was ineffective for failing to seek a 2-level  
18 reduction under U.S.S.G. § 2G2.2(b)(1), which applies when a defendant's offense did not  
19 involve intent to traffic, distribute, or transmit child pornography. (Joint Hr'g Br. 13:20–21).  
20 Petitioner's § 2255 Motion states that the indictment and plea agreement contain no allegations  
21 or admissions that Petitioner intended to distribute child pornography. (§ 2255 Mot. at 181–  
22 185). Petitioner further contends that Ojeda's failure to advocate for this reduction was  
23 unreasonable and prejudicial, as it likely increased the length of his sentence. (*Id.* at 185).

24 During the evidentiary hearing, Ojeda testified that she did discuss a reduction under  
25 U.S.S.G. § 2G2.2(b)(1) with the Government, but the Government was not willing to agree to

1 the reduction. As a result, a reduction was not incorporated into the plea agreement. Ojeda  
2 further testified that she could not seek reductions outside the bounds of the agreed upon plea  
3 agreement because Petitioner signed a plea agreement that was binding on the parties which  
4 stated: “The parties stipulate and agree to the following calculation of the defendant’s offense  
5 level under the Sentencing Guidelines, acknowledge that these stipulations do not bind the  
6 Court, and agree that they will not seek to apply any other specific offense characteristics,  
7 enhancements or reductions.” (2019 Plea Agreement 6:18–21, ECF No. 114). Ojeda testified  
8 that if she objected to the plea agreement and sought a 2-level reduction under U.S.S.G.  
9 § 2G2.2(b)(1), she would have been in breach of the plea agreement and the effects of the  
10 breach would be detrimental to Petitioner.

11 The Court agrees that Ojeda could not seek reductions once the plea agreement was  
12 entered into, and thus finds her decision to not seek a reduction at sentencing was not deficient  
13 performance. The Court also finds that Ojeda did seek a 2-level reduction under U.S.S.G. §  
14 2G2.2(b)(1), contrary to Petitioner’s assertion, when she asked the Government for the  
15 reduction during plea negotiations. Thus, Petitioner has failed to meet his burden of  
16 establishing deficient performance and Ground 5 is DENIED.

#### 17 **D. Ground 6**

18 In Ground 6, Petitioner argues that trial counsel Tony Abbatangelo and Ojeda were  
19 ineffective for failing to investigate and present an alibi defense. (Joint Hr’g Br. 15:6–7). First,  
20 both Abbatangelo and Ojeda testified that they investigated an alibi defense. When asked  
21 whether he investigated the case, Abbatangelo testified that he would have spoken with any  
22 person that the Petitioner asked him to speak with. But Abbatangelo also testified that  
23 Petitioner’s concern at the time was mainly focused on getting out of custody. As for Ojeda,  
24 she testified that she tasked an investigator with interviewing three people, most of whom were  
25 Petitioner’s roommates or friends, and talked with anyone she thought would be helpful to put

1 forward a possible defense. Thus, the Court finds that Abbatangelo and Ojeda both  
2 investigated an alibi defense and that their performance was therefore not deficient on this  
3 basis.

4 Second, Abbatangelo and Ojeda were not ineffective for failing to present an alibi  
5 defense because it would have been an unsuccessful strategy. Here, even if Abbatangelo and  
6 Ojeda were able to prove beyond a reasonable doubt that Petitioner was not at his residence on  
7 the date and time Detective Cody downloaded the child pornography from the IP address, such  
8 a showing would have no bearing on the validity of those downloads and the probable cause  
9 developed by Detective Cody to procure a search warrant for the IP address where the child  
10 pornography was coming from. As Trafford testified at the evidentiary hearing, Ares is a file  
11 sharing program that allows users to search for material and pull files or videos from Ares  
12 accounts on other people's computers so long as the other computer is on. Trafford explained  
13 that it is not necessary for a person to be physically behind the computer clicking and sharing a  
14 file or video at the moment Detective Cody was able to download the files. Trafford further  
15 testified that the computer simply must be on (including asleep), connected to Wi-Fi, and have  
16 the Ares file sharing program running in the background. Thus, an alibi would not have been a  
17 defense to the offense of Receipt of Child Pornography because Detective Cody could  
18 download child pornography from the IP address without Petitioner being physically present  
19 behind the computer screen at that same moment so long as the computer was turned on,  
20 connected to Wi-Fi, and had Ares running in the background. Accordingly, Abbatangelo and  
21 Ojeda were not ineffective for failure to present an alibi defense. *See Rupe v. Wood*, 93 F.3d  
22 1434, 1445 (9th Cir. 1996) (“[T]he failure to take a futile action can never be deficient  
23 performance.”). Accordingly, Ground 6 is DENIED.

1       **E. Ground 7**

2       Busby alleges that Ojeda was constitutionally ineffective for failing to investigate and  
3 challenge the PSR's assignment of criminal history points. (Joint Hr'g Br. 16:23–24).

4       Petitioner contends that Ojeda misrepresented that he had zero criminal history points and  
5 would therefore qualify as Criminal History Category I, when he in fact was in Criminal  
6 History Category II.

7       Ojeda testified that she informed Petitioner that she anticipated, but did not guarantee,  
8 that his criminal history category would likely be Category I. At the change of plea hearing,  
9 where the Court accepted Petitioner's guilty plea, Petitioner had not yet been arrested for the  
10 state offense, nor was Ojeda aware of the state investigation or upcoming charge that would  
11 remove Petitioner from a Criminal History Category I to a Criminal History Category II.  
12 Moreover, Ojeda testified at the evidentiary hearing that she is trained to avoid letting a client  
13 plead guilty in a state court proceeding while a federal court case is pending so that a  
14 defendant's criminal history points and criminal history range do not increase. She further  
15 testified that when Petitioner was arrested for the state crime, she was only able to  
16 communicate with Petitioner's parents and his state court attorney. She explained that she told  
17 Petitioner's parents that Petitioner should not plead in state court. Despite her admonition,  
18 Petitioner was adamant about resolving the state court case first so he could be released from  
19 state custody and ultimately pled guilty against Ojeda's legal advice which impacted his  
20 criminal history category. Between the two options, Petitioner made his preferred choice and  
21 was released from state custody.

22       In addition, the plea agreement signed by Petitioner states: "Defendant acknowledges  
23 that the Court may base his sentence in part on the defendant's criminal record or criminal  
24 history. *The Court will determine* the defendant's criminal history category under the  
25 sentencing guidelines." (2019 Plea Agreement 8:17–20, ECF No. 114) (emphasis added). At

1 the change of plea hearing, Petitioner affirmatively acknowledged that no one made any  
2 promises to him about what his sentence would be. (COP Tr. 20:10–12). He also stated that he  
3 understands that the Court will not be able to determine his sentencing guideline range until  
4 after the probation office has completed its PSR. At the same hearing, the Court informed  
5 Petitioner that he could make objections to the PSR. At sentencing, Petitioner confirmed that  
6 he had thoroughly discussed the PSR with Ojeda, and that he had no other objections for the  
7 Court to consider. The Court is entirely unconvinced with Petitioner’s arguments in this  
8 ground because at multiple points throughout Petitioner’s criminal proceedings, he confirmed  
9 that he understood how sentencing worked and acknowledged that no one, which includes  
10 Ojeda, had made promises to him. Thus, the Court finds that Petitioner was informed that the  
11 Court, not Ojeda, would ultimately determine his criminal history category and understood that  
12 his category would not be determined until closer to sentencing and that he could make  
13 objections to the PSR. Most importantly, he testified that no one had made promises to him  
14 about his sentence.

15 The Court finds that Ojeda was not ineffective for failing to give advice based upon facts  
16 that had not occurred or information she was unaware of prior to signing the guilty plea  
17 agreement and entering a change of plea. Nor was Ojeda ineffective for failing to make any  
18 objections related to Petitioner’s criminal history category because such objections would have  
19 been meritless. Thus, Ground 7 is DENIED.

#### 20 **F. Ground 7a**

21 Ground 7a is a cumulative argument relating to Petitioner’s state court case. This  
22 ground contends that Ojeda was ineffective because she: (1) failed to present or litigate  
23 objections to the PSR despite Petitioner’s express requests that she challenge both factual and  
24 scoring issues; (2) affirmatively misinformed Petitioner about his criminal history category; and  
25



1 (3) took affirmative steps to interfere with Petitioner's efforts to withdraw his plea in state  
2 court. (*See* § 2255 Mot. at 192–98). The Court addresses each sub-ground below.

3 First, Petitioner asserts that Ojeda failed to present or litigate objections to the PSR,  
4 despite his express requests that she challenge both factual inaccuracies and improper scoring.  
5 He claims that had Ojeda reviewed the PSR with him and raised the appropriate objections, the  
6 Court might have calculated a lower guidelines range. (Joint Hr'g Br. 17:22–26). The Court  
7 denies this sub-ground to the extent that Petitioner realleges claims in Ground 7. To the extent  
8 that Petitioner raises additional arguments, the Government argues that Ojeda made any  
9 objection that she believed had merit. (*Id.* 18:16–17). Indeed, Ojeda stated that she “received  
10 [Petitioner's] objections to the PSR and filed the objections she believed were appropriate.”  
11 (Ojeda's Resp. 5:21–22, Ex. 1 to Resp., ECF No. 197-1). Moreover, at the evidentiary hearing,  
12 Ojeda testified that prior to sentencing she clarified to the Court the areas of the PSR that  
13 Petitioner found discrepancies with. The Court has reviewed the § 2255 Motion for the  
14 objections Petitioner wanted to raise, reviewed the hearing transcript, and finds that Ojeda's  
15 failure to raise the objections Petitioner wanted constituted a reasonable strategic decision and  
16 was not deficient. Thus, this sub-ground claim is DENIED.

17 Second, Petitioner alleges that Ojeda affirmatively misinformed him about his criminal  
18 history category. (Joint Hr'g Br. 18:1–2). For the reasons discussed in Ground 7, this sub-  
19 ground claim is DENIED.

20 Third, Petitioner alleges that Ojeda took affirmative steps to interfere with his efforts to  
21 withdraw his plea in state court. (*Id.* 18:6–7). He alleges Ojeda contacted the attorney  
22 representing him on state charges and convinced him not to help Petitioner withdraw his plea,  
23 thereby sabotaging his attempt to assert his rights and achieve lower criminal history points for  
24 sentencing in federal court. (*Id.* 18:7–9). He claims that this interference, coupled with the  
25 misadvice regarding sentencing exposure, prejudiced his ability to make an informed and

1 voluntary decision to plead guilty. (*Id.* 18:9–11). During the evidentiary hearing, Ojeda  
2 testified that she recalls discussions around Petitioner wanting to withdraw his state guilty plea,  
3 so she emailed the Government and Probation Office the day before federal sentencing to give  
4 them notice of this potential change. Ojeda testified that she does not recall ever having a  
5 conversation with Petitioner’s state court attorney telling him not to let Petitioner withdraw his  
6 guilty plea. Petitioner’s Counsel did not further press Ojeda to go into the specific content of  
7 her communications with Petitioner’s state court defense attorney. Nor did Petitioner call his  
8 state court attorney as a witness to offer testimony related to this claim even though he was  
9 allegedly privy to this conversation between himself and Ojeda. Petitioner also did not offer  
10 any testimony himself about this claim during the evidentiary hearing. Thus, the Court finds  
11 that the available testimony establishes that Petitioner has failed to meet his burden of proving  
12 Ojeda was constitutionally ineffective as it relates to this sub-ground. Thus, this sub-ground  
13 claim is DENIED, and Ground 7a as a whole is DENIED.

#### 14 **G. Ground 8**

15 In Ground 8, Petitioner alleges that Abbatangelo and Ojeda were ineffective for failing  
16 to file a motion to suppress evidence found on the HP laptop<sup>2</sup> that was seized not from  
17 Petitioner’s residence, but later when he was arrested in December 2015. (Joint Hr’g Br. 20:11–  
18 12).

19 At the evidentiary hearing, Abbatangelo testified that he did not recall any discussion  
20 with Petitioner regarding a motion to suppress evidence on the HP laptop. He further explained  
21 that he only files motions that have merit. Because strategic decisions are entitled to a strong  
22 presumption of reasonableness, the Court finds that Abbatangelo’s decision to not file a motion  
23 to suppress does not constitute deficient performance. *See Harrington*, 562 U.S. at 104.

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24  
25  
<sup>2</sup> The laptop seized in the Petitioner’s residence containing child pornography was a Dell laptop.

1 As for Ojeda, she testified that she identified a standing issue which would preclude her  
2 from filing a motion to suppress evidence on the HP laptop. A decision not to file a motion to  
3 suppress is not deficient when a petitioner lacks standing to challenge the search. *James v.*  
4 *Borg*, 24 F.3d 20 (9th Cir. 1994). Moreover, Ojeda testified that if she filed a motion to  
5 suppress, the plea agreement offer would have been withdrawn. In addition, in the unlikely  
6 event that a motion to suppress the HP laptop was granted, Ojeda testified that the Court could  
7 still consider the evidence found in the HP laptop at sentencing even if it was suppressed. The  
8 Court agrees. *See e.g., United States v. Kim*, 25 F.3d 1426, 1435 & n. 8 (9th Cir.1994)  
9 (admitting evidence from illegal search and seizure at sentencing); *see also United States v.*  
10 *Acosta*, 303 F.3d 78, 86 (1st Cir. 2002) (explaining that “ten other circuits have ruled that in  
11 most circumstances, the Fourth Amendment exclusionary rule does not bar the introduction of  
12 suppressed evidence during sentencing proceedings.”). Lastly, Roohani testified that the  
13 Government informed Ojeda it did not intend to charge Petitioner based on the HP laptop,  
14 which further strengthens Ojeda’s decision to not file a motion to suppress evidence on the HP  
15 laptop. Because the Court finds that the four reasons given to support Ojeda’s decision not to  
16 file a motion to suppress are valid, Petitioner fails to meet his burden of proving that Ojeda’s  
17 performance was deficient for failing to file a motion to suppress. Accordingly, Ground 8 is  
18 DENIED.

#### 19 **H. Ground 9**

20 In Ground 9, Petitioner argues that Ojeda rendered ineffective assistance by failing to  
21 object to several sentencing enhancements under U.S.S.G. § 2G2.2(b)(2), (b)(4), and (b)(7)(B),  
22 which he contends were applied without adequate evidentiary support or legal justification.  
23 Petitioner asserts that these enhancements resulted in a significantly higher advisory guidelines  
24 range and ultimately a longer prison sentence.  
25

1 During the evidentiary hearing, Petitioner's counsel conceded that Ground 9 "flat out  
2 just do[esn't] make a lot of sense"<sup>3</sup> and asked the Court to construe the pro se § 2255 Motion  
3 liberally. Petitioner's counsel argued that the heart of this improperly alleged ground boils  
4 down to an argument for failing to enter the plea knowingly and intelligently. The Court  
5 disagrees.

6 Petitioner signed two virtually identical plea agreements (one while represented by  
7 Abbatangelo and the other while represented by Ojeda) which both state that "[t]he parties  
8 stipulate and agree to the following calculation of the defendant's offense level under the  
9 Sentencing Guidelines, acknowledge that these stipulations do not bind the Court, and agree  
10 that they will not seek to apply any other specific offense characteristics, enhancements or  
11 reductions." (2019 Plea Agreement 6:18–21).<sup>4</sup> The plea agreements then listed U.S.S.G.  
12 § 2G2.2(b)(2), (b)(4), and (b)(7)(B) under the agreed enhancements section. (*Id.* 7:3–7). Thus,  
13 two different attorneys separately explained to Petitioner these same terms in his guilty plea  
14 agreement. Moreover, there is sufficient evidence throughout the record to establish that the  
15 enhancements were properly applied based on Petitioner's conduct. Petitioner's argument that  
16 he did not knowingly enter the plea agreement as it relates to this ground is unconvincing when  
17 it is clear that he signed the plea agreements after being advised by two separate attorneys and  
18 testified in court at the change of plea hearing that he understood its terms. Thus, Petitioner has  
19 failed to meet his burden to establish that Ojeda's performance was deficient or that his plea  
20 was involuntary. Accordingly, Ground 9 is DENIED.

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21  
22  
23 <sup>3</sup> Counsel is correct. If Ojeda had objected to these enhancements at the change of plea hearing, Petitioner and  
24 Ojeda would have been in violation of the plea agreement which would have resulted in negative consequences  
for Petitioner.

25 <sup>4</sup> The first plea agreement Petitioner signed was not docketed because the change of plea hearing did not occur  
due to Petitioner's medical situation. The Court therefore does not provide a citation to the 2017 plea agreement.  
The Court maintains the 2017 plea agreement in its records and attests that it contains the same quoted language  
as the 2019 plea agreement.

## I. Ground 10

Petitioner argues that Ojeda was ineffective for not objecting at sentencing to certain statements the Government made in its Response Memorandum and at sentencing. (§ 2255 Mot. at 216). He asserts that these statements contained facts not within those stipulated in the plea agreement and were protected under his separate “cooperation” agreement with the government. (§ 2255 Mot. at 216). Petitioner alleges that he signed “a contract” while he was represented by Abbatangelo upon counsel’s explicit representation that Petitioner’s comments to the Government could not and would not be used against him for any charges or relevant conduct at sentencing. (Joint Hr’g Br. 25:8). Petitioner does not specify which comments were part of this contract nor who the contract was with, but the Court believes Petitioner is referring to an alleged proffer contract between himself and the Government. He further alleges that the Government breached the alleged contract by claiming at sentencing that Petitioner admitted to watching child pornography and attending pedophile sex parties, neither of which is included among the facts stipulated in the plea agreement.

To begin, if Petitioner is referring to a contract that is not one of the proffer agreements, he does not provide the Court with a copy of this alleged contract to review. Further, no testimony was given about contracts, other than proffer agreements, at the evidentiary hearing. Moreover, the plea agreement that was signed by Petitioner states that no such contract exists. (2019 Plea Agreement 20:2–8). But beyond that, in the Joint Hearing Brief, the Government explains that the statements made during sentencing that Petitioner takes issue with were made while explaining to the Court its justification for the generous 5K Motion. (Joint Hr’g Br. 25:18–19). The Government’s statements to support the 5K Motion were reflective of Petitioner’s statements during proffer sessions. Petitioner participated in three proffer sessions with the Government and signed a proffer agreement each time.

Section four of each proffer agreement states, “no statements made. . . by Christopher Busby at the meeting will be used directly against him in any criminal case brought by USAO-NV, except in the event of prosecution for false statements or perjury arising out of the proffer.” (*See, e.g.*, Jan. 4, 2018, Proffer Agreement, Gov. Hr’g Ex. 4). However, section five of each proffer agreement states that “the USAO-NV may use Christopher Busby’s statements or other information to rebut any evidence or arguments offered by or on behalf of Christopher Busby (including arguments made or issues raised *sua sponte* by the Court) at any stage of the criminal prosecution (including, but not limited, to removal hearing, motion hearing, trial, and sentencing.)” (*Id.*). The Court therefore finds that the Government was permitted to raise that Petitioner admitted to watching child pornography and his statements about zoom pedophile sex parties at sentencing after Petitioner attempted to minimize his involvement during the change of plea hearing. Had Ojeda objected to these statements, it is likely that Petitioner could have lost his 5K Motion reduction, because only the Government can move for such a motion. And as Ojeda testified, any such objections made about the information provided by Petitioner in the recorded proffer sessions could have resulted in the plea agreement being violated. Thus, Petitioner has failed to meet his burden to establish that Ojeda’s performance was deficient. Even assuming Ojeda should have made an objection, Petitioner has shown no prejudice because the Court granted the 5K motion and imposed the sentence requested by the parties. Accordingly, Ground 10 is DENIED.

#### **J. Ground 11**

In Ground 11, Petitioner alleges that Ojeda was “extraordinarily ineffective” for not hiring a forensic examiner to examine the contents of the Dell laptop. (§ 2255 Mot. at 218). He again raises questions about ownership of the Dell laptop, whether any evidence on the Dell laptop established that he knowingly downloaded or received the videos, and potential third-party access, among other issues. (*Id.* at 221–24). Because the Court has already determined

1 that Ojeda was not ineffective for hiring a forensic expert to determine whether Petitioner  
2 owned the Dell laptop, despite third-party use/access, the Court will only focus on Petitioner's  
3 remaining arguments in this ground.

4 To begin, strategic decisions—including whether to hire an expert—are entitled to a  
5 “strong presumption” of reasonableness. *Harrington*, 562 U.S. at 104. Defense lawyers have  
6 limited time and resources, and they must choose from among countless strategic options. *Id.* at  
7 106–07. Such decisions are particularly difficult because certain tactics carry the risk of  
8 “harm[ing] the defense” by undermining credibility with the jury or distracting from more  
9 important issues. *Id.* at 108. Here, Ojeda testified that she identified a forensic expert but  
10 ultimately made the decision to not hire the expert. Moreover, Petitioner did not hire or present  
11 testimony from a forensic expert at the evidentiary hearing to establish prejudice despite his  
12 assertion that he would have liked one. Even more, when asked by the Court at the evidentiary  
13 hearing how he believed a forensic expert would be helpful to his case, Petitioner answered that  
14 an expert would be able to demonstrate that hundreds of people used his laptop, but he did not  
15 know how an expert would actually be able to do that. Thus, Petitioner has failed to meet his  
16 burden of proving that Ojeda was ineffective for failing to hire a forensic expert. Accordingly,  
17 Ground 11 is DENIED.

#### 18 **K. Ground 12**

19 Petitioner argues that Ojeda was ineffective for failing to file pretrial suppression  
20 motions and that Tanaka was ineffective for failing to make appellate arguments regarding the  
21 same. (Joint Hr'g Br. 27:16–17); (Not. re Grounds 2:21–22). Petitioner did not put forth any  
22 evidence at the evidentiary hearing related to Tanaka. For the reasons stated in Ground 3,  
23 Petitioner therefore fails to meet his burden of establishing that Tanaka was ineffective in this  
24 ground.  
25

1 As for Ojeda, Petitioner contends that she was ineffective because she failed to challenge  
2 Fourth Amendment violations pertaining to the seizure of both the Dell and HP laptops. He  
3 also claims that Ojeda failed to file a *Franks* motion. (Joint Hr'g Br. 27:19–22). Petitioner  
4 claims that such a motion should have been made to address the false statements in the search  
5 warrant affidavit. (*Id.* 27:21–22). Petitioner claims that the affidavit contained conflicting IP  
6 addresses and file downloads from the Dell laptop that the government's expert concluded  
7 stopped working a month before Detective Cody downloaded three illegal videos from it. (*Id.*  
8 27:21–23).

9 First, Petitioner's argument regarding Ojeda's failure to file a motion to suppress the HP  
10 laptop is denied for the same reasons stated in Ground 8. Next, as to the argument that Ojeda  
11 failed to move for a *Franks* hearing over a discrepancy in the IP address as listed in the search  
12 warrant, Petitioner also fails to meet his burden. To obtain a *Franks* hearing, a defendant must  
13 do the following: (1) “allege specifically which portions of the warrant affidavit are claimed to  
14 be false [or which facts were omitted]”; (2) “contend that the false statements or omissions  
15 were deliberately or recklessly made”; (3) include “a detailed offer of proof, including  
16 affidavits”; (4) challenge “the veracity of only the affiant”; and (5) show that “the challenged  
17 statements [are] necessary to find probable cause.” *United States v. Perdomo*, 800 F.2d 916,  
18 920 (9th Cir. 1986) (quoting *United States v. DiCesare*, 765 F.2d 890, 894–95 (9th Cir.1985)).

19 At the evidentiary hearing, Trafford testified that when Detective Cody drafted the  
20 search warrant, she listed an incorrect IP address due to a typographical error when editing over  
21 a previous search warrant. But he also testified that the affidavit in support of the search  
22 warrant listed the correct IP address. To obtain a *Franks* hearing, the movant must identify  
23 which portions of the warrant affidavit are claimed to be false. *Perdomo*, 800 F.2d at 920.  
24 Here, the typographical discrepancy was in the search warrant, not the affidavit. Busby does  
25 not identify which portion of the affidavit was false, so he fails to meet his burden of proving



1 that Ojeda's performance was deficient for failing to move for a *Franks* hearing. *See Perdomo*,  
2 800 F.2d at 920; *Rupe*, 93 F.3d 1434, 1445 (9th Cir. 1996) ("[T]he failure to take a futile action  
3 can never be deficient performance."). Thus, Ground 12 is DENIED.

#### 4 **L. Ground 17**

5 Petitioner argues that Ojeda and Abbatangelo were ineffective for failure to investigate  
6 whether Petitioner owned the Dell laptop. For the reasons discussed in Ground 1, neither Ojeda  
7 nor Abbatangelo were ineffective for failing to investigate whether Petitioner owned the Dell  
8 laptop. Moreover, at the change of plea hearing, Petitioner stated the Dell laptop was mainly in  
9 his possession, which is consistent with Trafford's findings (photos, usernames, emails, autofill  
10 fields, etc. all matching Petitioner). Thus, Ground 17 is DENIED.

#### 11 **M. Ineffective Assistance of Counsel Conclusion**

12 Upon consideration of the § 2255 Motion briefing, live testimony, the supporting and  
13 opposing memoranda, the arguments of counsel, the record, and the relevant legal authorities,  
14 the Court DENIES Petitioner's § 2255 Motion in its entirety because Petitioner fails to meet his  
15 burden of establishing ineffective assistance of counsel under *Strickland v. Washington*. *See*  
16 466 U.S. at 687.

#### 17 **N. Certificate of Appealability and Separate Judgment**

18 The Government requests that the Court deny Petitioner a Certificate of Appealability  
19 and to direct the Clerk of Court to enter a separate judgment. (§ 2255 Resp. 31:9–10, ECF No.  
20 197).

21 Petitioners must receive a Certificate of Appealability from the court to proceed with an  
22 appeal of a § 2255 Motion Order. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1;  
23 *Allen v. Ornoski*, 435 F.3d 946, 950–51 (9th Cir. 2006); *see also United States v. Mikels*, 236  
24 F.3d 550, 551–52 (9th Cir. 2001). To warrant a Certificate of Appealability, Petitioner must  
25 make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2);

1 *Slack v. McDaniel*, 529 U.S. 473, 483–84 (2000). He bears the burden of demonstrating that  
2 the issues are debatable among jurists of reason; that a court could resolve the issues  
3 differently; or that the questions are adequate to deserve encouragement to proceed further.  
4 *Slack*, 529 U.S. at 483. The Court has considered whether each of the issues raised by  
5 Petitioner satisfies the standard for issuance of a Certificate of Appealability and determines  
6 that none of the issues meet that standard. *See Slack*, 529 U.S. at 483. The Court therefore  
7 DENIES Petitioner a Certificate of Appealability.

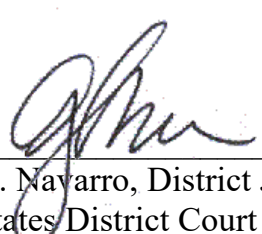
8 “Section 2255 proceedings are governed by procedural rules developed by the Supreme  
9 Court and adopted by Congress.” *Kingsbury v. United States*, 900 F.3d 1147, 1149 (9th Cir.  
10 2018); *see also* Rules Governing Section 2255 Proceedings for the United States District  
11 Courts. Those rules provide that judgment must be entered in compliance with Rule 58(a) of  
12 the Federal Rules of Civil Procedure. Under Rule 58, an order that is dispositive of the  
13 proceedings is usually insufficient to enter judgment. Fed. R. Civ. P. 58(a). Instead, judgment  
14 must be expressly entered in a “separate document,” except when the district court decides  
15 certain listed motions—which do not include § 2255 motions. Fed. R. Civ. P. 58(a), (c)(2)(A).  
16 Thus, the Clerk of Court is kindly directed to enter separate judgment for this Order.

17 **IV. CONCLUSION**

18 **IT IS HEREBY ORDERED** that Petitioner’s § 2255 Motion, (ECF No. 184), is  
19 **DENIED**. The Court **DENIES** Petitioner a Certificate of Appealability.

20 The Clerk of Court is kindly directed to enter separate judgment for this Order.

21 **DATED** this 16 day of July, 2025.

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Gloria M. Navarro, District Judge  
United States District Court